

**Comments of the Cheyenne River Sioux Tribe  
on the Department of Energy Section 1813 Right-of-Way Study**

Submitted this 18th day of April, 2006.

1. Existing Tribal Constitutions, Federal law, and treaty provisions that prevent third parties from using tribal lands without the consent of the Tribe must be preserved.
2. The power of a Tribe to consent or withhold consent to the use of tribal lands includes the lesser power to place conditions on that consent, including conditions related to tribal jurisdiction, compensation, and duration of use. The conditions a Tribe imposes on the use of its land should be respected as serving the best interests of the communities located within the Tribe's jurisdiction.
3. Federal law and policy should not be changed to require perpetual rights-of-way or automatic renewal of rights-of-way because such changes would deprive Tribes of control of their lands. It would also violate the Tribal Constitution of some Tribes which supercedes any and all Department of Interior regulations issued in contradiction therewith. No such restriction is placed upon States managing state lands or upon federal agencies managing federal lands.
4. Congress should not consider any change in the existing laws requiring Tribal consent to a right-of-way. Provisions permitting rights-of-way over tribally held trust lands over tribal objections deprive communities of the ability to make decisions in the best interests of the communities. A parallel example of why a government must have control over the use of its lands is the issue of ANWR opening for oil development, which has been considered by Congress numerous times. The balance between energy interests and benefits to consumers and environmental and cultural preservation concerns has been considered in Congress for over fifteen years. As the sovereign, the United States Congress has had the ongoing authority to balance competing interests in land use. Such authority preserved to tribal governments is the only method to ensure local control over development, and true governmental decision making. What Congress will not impose upon itself, it should not be willing to impose upon another sovereign government.
5. Statutory, regulatory, policy and administrative impediments to the use of tribal lands for energy transmission purposes should be removed, so long as the requirement of tribal consent remains inviolate. Decisions about statutory, regulatory and policy changes at the federal level impacting tribal land use must be made only after careful consideration and joint decision making with tribal governments consistent with the principles of self-determination.
6. No right of way or other business arrangement that allows non-tribal entities or persons to use tribal land should reduce the jurisdiction of the Tribe over its land or over persons and activities occurring on such lands.

7. Tribes should continue to have the right to negotiate compensation for the use of tribal land that gives Tribes a fair share of the economic benefits produced by the use of their land, and permits Tribes to assess the value of any negative impacts of such rights-of-way to the communities impacted. Allowing federal control over land valuation will, inevitably, result in loss of valuable tribal lands, undervaluation of such lands, and severe economic damage to Tribal governments. As a case in point, Congress authorized the construction of large reservoirs for hydropower development and navigation at the urging of private industry along the Missouri River without even notifying Tribal governments affected. The dams flooded hundreds of thousands of acres of Indian lands along the Missouri River. Valuation and compensation did not include the immediate or long-term impacts on the tribal economy and society of these floodage easements. Tribal concerns about these impacts were excluded from valuation of the lands flooded. The result has been the ongoing economic destruction, poverty, and devastation of the Tribes located on the Missouri River that started in 1954 and continues today. Of the Tribes on the Missouri River, none is economically self-sufficient and none was adequately compensated for the loss of lands to a floodage easement and federal taking of these lands. This is a prime example of why federal Congressional actions to authorize eminent domain over tribal lands is destructive of tribal government, and the economic prosperity for tribal nations. The second example of federal eminent domain type actions and their impact on tribal economies is the enactment of the Dawes Act pursuant to which half of the Tribal lands in the United States were removed from Tribal control. This too resulted in economic disaster for Tribal nations and the United States. No example of loss to an energy company for tribal refusal to grant a right-of-way can compare with the devastating results of permitting private companies and private party interests to influence use of tribal lands.
8. Any effort to study the issue of eminent domain over tribal lands must include the following actions of eminent domain enacted by the United States, their impact on the affected tribal communities, and the cost of the loss of tribal self-sufficiency to the federal government in outlays resulting from a lack of economic development: 1) the Dawes Act; 2) the Homesteading Acts; 3) The Black Hills Taking Act and United States v. Sioux Nation which valued the lands at an egregiously low amount; 4) The Pick- Sloan Act and resulting additional JTAC bills passed by Congress; 5) The loss of land use value including the loss of air and water quality from easements including railroads and energy pipelines, and 6) the cost to tribal communities from environmental disasters upon such lands such a oil pipeline spills and leaks, gas leaks, etc.
9. The Indian Tribal Energy Development and Self Determination Act of 2005 established the correct policy for energy transportation on tribal land: deference to tribal decision-making and free market principles.
10. Federal law and policy should provide positive incentives for Tribes to participate as active partners with industry in energy development, transmission and distribution.
11. Federal law and policy should encourage business arrangements, including joint ventures, that facilitate the alignment of economic interests between energy companies and Tribes.

12. Current laws and regulations that permit the granting of rights of ways on allotted lands without allottee consent provide an example of allottees losing control over their lands, with an inability to negotiate or assure that owners receive fair market value; inability to ensure that use of the land is consistent with environmental concerns; and inability to ensure that use of the lands is not inconsistent with owner interests in land use. However, this is an impact on individual landowners. Taking Tribal government control over land away would be akin to removing State authority of eminent domain and land use regulation over lands in the State. The federal government would never propose to take these authorities away from a State and likewise should not remove government control over land use from Tribal governments.
13. Any attempt to remove Tribal government consent to leasing of lands or granting of easements and/or rights-of-way is inconsistent with the sovereign status of Tribal governments. It would be as ridiculous as exerting eminent domain for the benefit of energy companies over State owned lands which are held for the benefit and use of the residents of a state. Only a governmental authority may exert eminent domain – NOT private companies.
14. A limited case study approach will not provide adequate or accurate information because each Tribe's experience with leasing and granting of rights-of-way is both time dependent and geographically dependent. Depending on the location; identity of the Bureau of Indian Affairs/ Department of Interior/ Department of War individuals overseeing rights-of-way and permitting processes; the nature of the easement granted and at what time in history such easement was granted, the information gathered will vary greatly. Prior to implementing a "case study" approach, the Department must be aware of the diversity geographically, temporally, and in terms of size of land holdings to determine if case studies conducted are in any fashion representative of the diversity of experiences with rights-of-way and easements. In addition, with the loss of so many records within the BIA over the course of time, the failure to properly record rights-of-way and easements, and the lack of price paid information in BIA recordkeeping make a time-based study impracticable at best. Any study based solely on a time period of less than ten years will also suffer from a lack of accuracy of historical treatment of rights-of-ways.
15. Policies upon which prior decisions of Congress to exert eminent domain over particular tribal lands were based assumed Tribal governments were incapable of making rationale decisions for the benefit of residents on Tribal land. This paternalistic view of Indian persons and Indian tribes as the Ward of the federal government have been replaced by the view of Tribal governments as the best decision makers to determine the best interests of tribal communities. These principles of tribal self-determination and tribal self-sufficiency are inconsistent with any effort to grant any party, including a federal agency, the right of eminent domain in the granting of easements, rights-of-way, or leases within Indian country. Any effort to re-assert federal eminent domain over tribal lands is a return to the paternalistic view of tribal nations as wards of the government that resulted in the economic and physical destruction of tribal communities.

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TRIBAL MEMORANDUM

TO : SUPERINTENDENT, Cheyenne River Agency

FROM : Colette LeBeau Iron Hawk, Tribal Secretary

DATE: 4/10/06

SUBJECT: Resolution No. 166-06-CR: that the Tribal Environment and Natural Resources Committee is authorized to finalize tribal comments on the proposed right-of-way study working with the Tribal Legal Department; and that the Tribal Environment and Natural Resources Committee working with the Tribal Chairman is authorized to attend meetings and to prepare Comments for such meetings with the Department of Interior and Department of Energy and to meet with Department of Interior and Department of Energy officials in this regard; and that the Cheyenne River Sioux Tribe strongly opposes any efforts by any federal agencies to obtain approval rights-of-way or easements in Indian Country without the approval of the Tribal Council; and contains the provision.

Transmitted herewith are an original and two (2) copies of Resolution No. 166-06-CR which was duly adopted by the Cheyenne River Sioux Tribal Council during its Regular Session held on April 6, 2006.

CIH/wc

CC: Chairman

Treasurer

Administrative Officer

District Officers

Central Records

CRST Legal Dept.

File/2

The blue represents the thunder clouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka - The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

RESOLUTION NO. 166-06-CR

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians, having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources; and to promote the general welfare of its people, has ordained and established a Constitution and By-Laws; and

WHEREAS, the Constitution of the Cheyenne River Sioux Tribe generally authorizes and empowers the Tribal Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and

WHEREAS, the Cheyenne River Sioux Tribe has determined that it is in the best interests of the Tribe to submit Comments to the Department of Energy and Department of Interior on Section 1813 Right-of-Way Study under the Energy Policy Act of 2005 on rights-of-way in Indian Country, as such study may result in efforts to assert federal eminent domain over tribal lands and lands within Indian Country; now

THEREFORE BE IT RESOLVED, that Tribal Energy and Natural Resources Committee is authorized to finalize tribal comments on the proposed right-of-way study working with the Tribal Legal Department; and

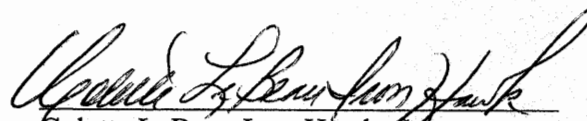
BE IT FURTHER RESOLVED, that the Tribal Environment and Natural Resources Committee working with the Tribal Chairman is authorized to attend meetings and to prepare Comments for such meetings with the Department of Interior and Department of Energy and to meet with Department of Interior and Department of Energy officials in this regard; and

BE IT FURTHER RESOLVED, that the Cheyenne River Sioux Tribe strongly opposes any efforts by any federal agencies to obtain approval rights-of-way or easements in Indian Country without the approval of the Tribal Council; and

BE IT FINALLY RESOLVED, that nothing in this resolution diminishes, divests, alters or otherwise affects any inherent, treaty, statutory or other rights of the Cheyenne River Sioux Tribe over the property or activities described herein. The Cheyenne River Sioux Tribe expressly retains all rights and authority over the property and activities described herein, including but not limited to legislative, regulatory, adjudicatory and taxing powers.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members of whom 13, constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held this 6<sup>th</sup> day of April, 2006, Regular Session; and that the foregoing resolution was duly adopted at such meeting by a roll call vote of 13 yes, 0 no, 0 abstaining and 2 absent.

  
Colette LeBeau Iron Hawk, Secretary  
Cheyenne River Sioux Tribe